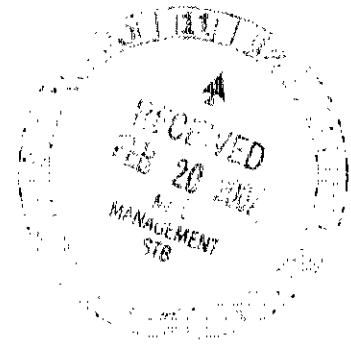


BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.



218550

Finance Docket No. 34982

JAMES RIFFIN, DBA THE NORTHERN CENTRAL RAILROAD– ACQUISITION AND OPERATION EXEMPTION – ON FORMER MARYLAND AND PENNSYLVANIA RAILROAD RIGHT-OF-WAY, BETWEEN THE NORTHERLY SIDELINE OF THE FORMER PENNSYLVANIA RAILROAD RIGHT-OF-WAY, NEAR PENNSYLVANIA STATION IN BALTIMORE CITY, MARYLAND, AND THE INTERSECTION OF THE LINE WITH THE EASTERLY SIDELINE OF THE FORMER BALTIMORE AND OHIO RAIL LINE, NOW CSX TRANSPORTATION'S LINE, NORTH OF NORTH AVENUE, INCLUDING APPROXIMATELY 1.4 MILES OF RIGHT-OF-WAY ADJACENT AND PARALLEL TO FALLS ROAD, AND INCLUDING APPROXIMATELY 0.8 MILES OF RIGHT-OF-WAY WHICH CONNECTED THE MARYLAND AND PENNSYLVANIA RAILROAD WITH THE FORMER BALTIMORE AND OHIO RAILROAD, ALL IN BALTIMORE CITY, A TOTAL DISTANCE OF APPROXIMATELY 2.2 MILES

APPLICANT'S RESPONSE TO CSXT, MTA and BSM COMMENTS

MOTION FOR DETERMINATION

James Riffin, dba The Northern Central Railroad, (Applicant), a Class III Carrier, provides the following Response to the comments filed in the above entitled proceeding by CSXT, the Maryland Transit Administration ("MTA"), and the Baltimore Streetcar Museum, Inc. ("BSM")

I. RESPONSE TO COMMENTS.

1. The MTA and BSM both questioned whether the Applicant was a Class III carrier.

**Response:** See *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X) (STB served August 18, 2006); *James Riffin d/b/a The Raritan Valley Connecting Railroad – Acquisition and Operation Exemption – On Raritan Valley Connecting Track*, STB Finance Docket No. 34963, (STB served December 20, 2006).

2. The commenters questioned whether the line which is the subject of this proceeding ("Line"), was still a line of railroad, and who owned the Line.

**Response:** In *Maryland & P.R. Co. Abandonment*, 295 I.C.C. 719 (1958), the Interstate Commerce Commission ("Commission") granted the Maryland & Pennsylvania Railroad ("MPR") authority to abandon that portion of its line that was in Maryland, including the portion that is the subject of this proceeding. On page 727 of the decision, the Commission specifically stated the abandonment was subject to the condition that any part of the line could be sold to any person who desired to continue providing railroad service. The decision specifically stated the heaviest rails on the MPR was 90-pound rail, and specifically stated the [Morgan] Millwork Company shipped cars on both the Pennsylvania Railroad ("PRR") [via the MPR / PRR interchange], and the Baltimore & Ohio ("B&O") railroad [via the MPR / B&O interchange].

3. On page one of an article posted on the Baltimore County, Maryland Web Site, entitled *Unsung Monuments in "The Monumental City,"* appears a photograph depicting the portion of the MPR that went under the North Avenue bridge. A copy of this page is appended as **Exhibit One**. The byline for the photograph states:

"Longest surviving piece of MA & PA trackage in Baltimore is this track at the North Avenue Bridge which was used as an interchange to the Pennsylvania Railroad tracks just west of Pennsylvania [sic] Station. In reality, the rails were laid down by the PRR around 1960, as they still used the rails after MPA abandonment to reach Morgan Millwork."

4. On Sunday, February 4, 2007, the Applicant inspected the rail which is depicted in this photograph, and those additional portions of rail still visible on that portion of the line which is the subject of this proceeding. The rail is 130-pound PS [Pennsylvania Railroad Standard] rail. The Morgan Millwork turnout, which is located approximately 200-feet north of the top of the photograph, is a PRR 152-pound No. 8 turnout. The turnout is located on the **west** side of Falls Road. Attached to this Response is Applicant's **Exhibit Two**, which is a copy of a diagram of the MPR Baltimore Terminal Facilities as they existed in 1955, or just prior to the date of the MPR's abandonment petition. The diagram clearly shows the MPR serviced the Morgan Millwork Company via a lead on the **east** side of Falls Road. Applicant would argue this

physical evidence conclusively establishes that the PRR acquired the portion of the Line which is the subject of this proceeding, replaced the MPR's 90-pound rail with PRR 130-pound PS rail, installed a new 152-pound PRR turnout, installed a new 130-pound lead to service the Morgan Millwork Company, then proceeded to use this portion of the former MPR line as a line of railroad.

5. On February 12, 2007, the Applicant reviewed the following Board files:
  - a. All PRR filings from FD # 18856 (February 7, 1955) through FD# 26100 (March 4, 1970).
  - b. All Penn Central filings from FD# 26100 (March 4, 1970) through FD# AB 5 (Sub No. 106) (September 11, 1972).
  - c. All Conrail filings from AB 167 (Sub. No. 1) through AB 167 (Sub. No. 1185X) (July 3, 2006).
  - d. All B&O filings from FD # 19166 (December 8, 1955) through AB 19 (Sub No. 102X) December 31, 1984.

6. The Applicant did not find any filings granting the PRR, the Penn Central, Conrail, or the B&O, authority to abandon, or to discontinue service over, that portion of the MPR that is the subject of this proceeding.

7. From the above evidence, Applicant would argue that portion of the MPR that is the subject of this proceeding, continued to be used as a line of railroad after the MPR ceased its Maryland operations. Applicant would further argue that since no record could be found granting authority to abandon, or to discontinue service over, the Line, the Line still is a line of railroad, and as such is subject to the jurisdiction of the Board.

8. The evidence indicates the PRR owned that portion of the Line which has 130-pound PS rail on it. The PRR was acquired by Conrail. In 1999, Norfolk Southern Railway Company ("NS") acquired all of PRR's assets. Consequently, the Applicant would argue NS owns that portion of the Line from the former interchange point with the PRR, to the 152-pound PRR turnout, and for several thousand feet north of the 152-pound turnout. [The rails on this later

portion of the Line have been buried. Consequently, your Applicant cannot ascertain with certainty how many feet of 130-pound PS rail the PRR placed on the right-of-way. The PRR would have acquired sufficient right-of-way to enable a train to pull past the PRR turnout.] The B&O may have acquired the switchback which connected the MPR with the B&O, plus sufficient additional right-of-way to connect with the PRR's rails, in order to ensure the B&O could continue providing rail service to the Morgan Millwork Company. The Applicant continues to research this matter, and will report his findings to the Board at a later date.

9. CSXT indicated it felt the following should be completed **prior to filing** a Notice of Exemption "(NOE)" to acquire and operate a line of railroad:

- A. The Applicant should have already executed an Industrial Rail Carrier Agreement and an Interchange Agreement.
- B. There should already be a connection between the line being acquired, and the line(s) the Applicant proposes to interchange with.
- C. The Applicant should have already executed an agreement with the owner of the property / rail line.

**Response:** The questions presented seek an answer to the dilemma of where one should begin a process: Should one seek and acquire Board authority prior to negotiating with appropriate parties regarding the acquisition and operation of a line? Or should one negotiate with appropriate parties, then after agreements have been reached, seek Board authority to acquire and operate a line? The Applicant would argue the most efficient process would be to seek and acquire Board authority first. For if Board authority is not granted, then the time and effort spent negotiating with interested parties would be wasted. Prior Board decisions confirm this, for the Board has ruled the authority one acquires via a NOE merely permits one to consummate the acquisition. It does not compel the owner to transfer title to the Applicant.

10. When the Applicant acquired his Allegany County, Maryland line of railroad from CSXT, his contact at CSXT was very specific: CSXT does not negotiate Industrial Rail Carrier Agreements or Interchange Agreements prior to consummation of acquisition of the line. In the instant case, the Applicant did have several conversations with his CSXT contact person regarding the line which is the subject of this proceeding. In a conversation between Mr.

Gittomer, counsel for CSXT, and the Applicant, Mr. Gittomer acknowledged he was aware the Applicant had discussed Applicant's acquisition of the Line with CSXT personnel, and had discussed potential interchange points with CSXT were Applicant successful in his efforts to acquire the Line.

11. While it would be convenient if the Line was still connected to the interstate rail system, the fact that it presently is not connected does not pose an insurmountable obstacle. In fact, it may become an advantage, for now one can pick the most appropriate point to reconnect, rather than being forced to use an existing point of connection.

12. Mr. Gittomer, the BSM and the MTA were concerned the Applicant may interfere with the BSM's trolley car operations, or the MTA's operations.

**Response:** Attached to this filing as **Exhibit 3**, is a drawing which depicts the relative locations of the MPR line which is the subject of this proceeding, and the relative locations of the former B&O, now CSXT, line; the former PRR, now Amtrak / NS, line; the former Northern Central Railroad, now NS, line; the MTA's light rail line; and the BSM's trolley car tracks. The MTA's light rail tracks are on the other side of the river which flows parallel to the Line. NS presently provides freight rail service on Amtrak's tracks. The trolley tracks are on the **east** side of Falls Road, while the Line is on the **west** side of Falls Road. While utilizing the switchback to gain access to CSXT's line would require crossing over the BSM's trolley tracks, the Applicant does not believe this crossing would significantly impact the BSM's use of its trolley tracks. [The BSM uses its trolley tracks for excursion purposes on Sunday afternoons.]

13. The commenters have opined the City of Baltimore owns the real estate the line is on, and have opined the City of Baltimore would be unwilling to sell the real estate to the Applicant.

**Response:** The opinions of the commenters regarding who may own the real estate, and whether the real estate owner(s) may, or may not, wish to sell the real estate, has no probable value. A railroad need not own the real estate its line is on. Over the past several decades railroads have sold their right-of-ways, and their rails, to non-carriers. The Board has held this to be permissible, so long as the purchaser does not acquire rights that could significantly adversely

impact the carrier's ability to provide freight rail service on the line.

14. The BSM opined that the Applicant's proposed activities would significantly adversely affect historic structures [the MPR roundhouse, and the BSM shop building (former MPR freight shed)].

**Response:** As exhibit 3 clearly shows, these structures are located on the east side of Falls Road, while the Line is located on the west side of Falls Road. **Exhibit 4**, which is a photograph of the Line prior to abandonment, shows the Line on the west side of Falls Road, the round house, and the switchback that ascends out of the valley up to the B&O interchange. The photograph also shows the Northern Central's yard on the west side of the river, and the NCRR / B&O interchange.

15. The Applicant feels his responses address the issues raised by the Commenters. If the Board feels the Applicant should provide the Board with additional information, the Applicant would do so. The Applicant would argue any information regarding the commercial viability of the proposed transaction, would be highly confidential proprietary information, which could only be disclosed to outside counsel. If requested, Applicant would provide this information to the Board under seal, and would provide the information to outside counsel who had signed an appropriate undertaking.

## **II. MOTION FOR DETERMINATION**

16. Paragraphs 1 through 15 are incorporated by reference herein as if fully stated herein.

17. Applicant would pray the Board make a determination that the line which is the subject of this proceeding is still a line of railroad, and as such, is still subject to the jurisdiction of the Board.

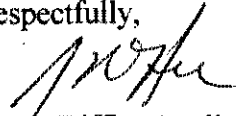
18. In the event the Board rules the Line is no longer subject to the jurisdiction of the Board, Applicant would pray the Board grant Applicant leave to amend his Application, so that he may cite the appropriate statutory authority.

19. Applicant would further pray the Board make a determination that rail carriers may use the class exemption procedures to obtain authority to acquire and operate a rail line even when that acquisition and operation is opposed. Using the class exemption procedures in a proceeding where the acquisition and operation of a rail line is opposed, is in conformity with rail transportation policy, particularly when opposing parties have been afforded an opportunity to submit comments to the Board, and a full record is before the Board prior to the effective date of the exemption. See *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK*, Finance Docket No. AB 6 (Sub No. 430X), Served January 26, 2007 (wherein the Board granted an abandonment exemption even though the abandonment was strongly opposed). Using the class exemption procedures in this proceeding would be in conformity with 49 U.S.C. §10101 (2) [to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required; (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense; (7) to reduce regulatory barriers to entry into the industry; (14) to encourage and promote energy conservation; and (15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part. Using the class exemption procedures in this proceeding would not significantly adversely impact any rail transportation policy.

20. In the event the Board determines the class exemption procedures are not appropriate in this proceeding, the Applicant would ask that the Board grant the Applicant an individual exemption granting the Applicant authority to acquire and operate the Line. Granting an individual exemption would be in conformity with rail transportation policy, as enumerated in ¶19, *supra*. Furthermore, at the time this issue is addressed, the record before the Board will be complete, there will be no need for further regulatory scrutiny, additional repetitious proceedings would not be needed to carry out the rail transportation policy set forth in 49 U.S.C. 10101, and granting the individual exemption would minimize the administrative expense of conducting further repetitious proceedings. Granting the individual exemption would also be in conformity with the Board's *BNSF Railway Company – Abandonment Exemption – In Oklahoma County, OK, op. cit.*, decision, wherein the Board, on its own motion, granted Stillwater Central

Railroad, Inc. an individual exemption after rejecting Stillwater's class exemption petition.

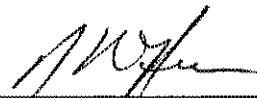
Respectfully,



James Riffin, Applicant

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of February, 2007, a copy of the foregoing Applicant's Response to CSXT, MTA and BSM Comments, was mailed via first class mail to each of the parties listed on the Service List below.



James Riffin

### **Service List**

Louis Gittomer  
Ste 301  
600 Baltimore Ave.  
Towson, MD 21204

Charles A. Spitulnik  
Kaplan Kirsch Rockwell  
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1001 Connecticut Ave., N.W.  
Washington, D.C. 20036

Christopher M. McNally  
Corporate Secretary  
Baltimore Streetcar Museum, Inc.  
P.O. Box 4881  
Baltimore, MD 21211



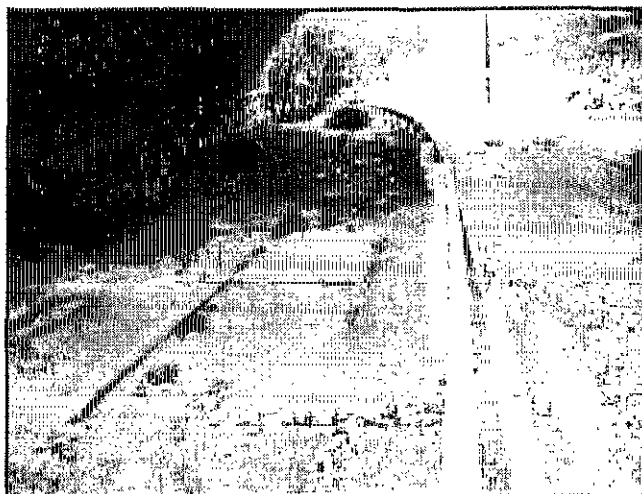
# Unsung Monuments in "The Monumental City"

*monuments*

EXHIBIT  
1

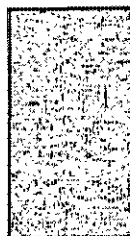
## "The Ma & Pa"

all photos by Adam Paul



Longest surviving piece of MA & PA trackage in Baltimore is this track at the North Avenue Bridge which was used as an interchange to the Pennsylvania Railroad tracks just west of Pennsylvania Station. In reality, the rails were laid down by the PRR around 1930, as they still used the rails after MPA abandonment to reach Morgan Millwork.

It was often called "WORLD FAMOUS." Others referred to it as the "model railroad built to the scale of 12 inches to the foot." Officially known as THE MARYLAND & PENNSYLVANIA RAILROAD, the "Ma & Pa" was arguably the most loved and cherished railroad in Baltimore. It carried with it a degree of charm not often seen on the larger railroads, largely the result of it's hilly, twisting route and smaller trains. It ran steam trains in regular service until the early 1950's, which were only sidelined as the road's traffic declined.



[Click Here](#) to see a map of the Baltimore area trackage covered by the MA & PA.

In 1958, the "Ma" of the Ma & Pa all but died, as the Maryland district trackage was abandoned, aside from a small part in Northernmost Harford County to Whiteford. Eventually, by the 1970's, the line would assume control of a ex-Pennsy line into

# EXHIBIT 2

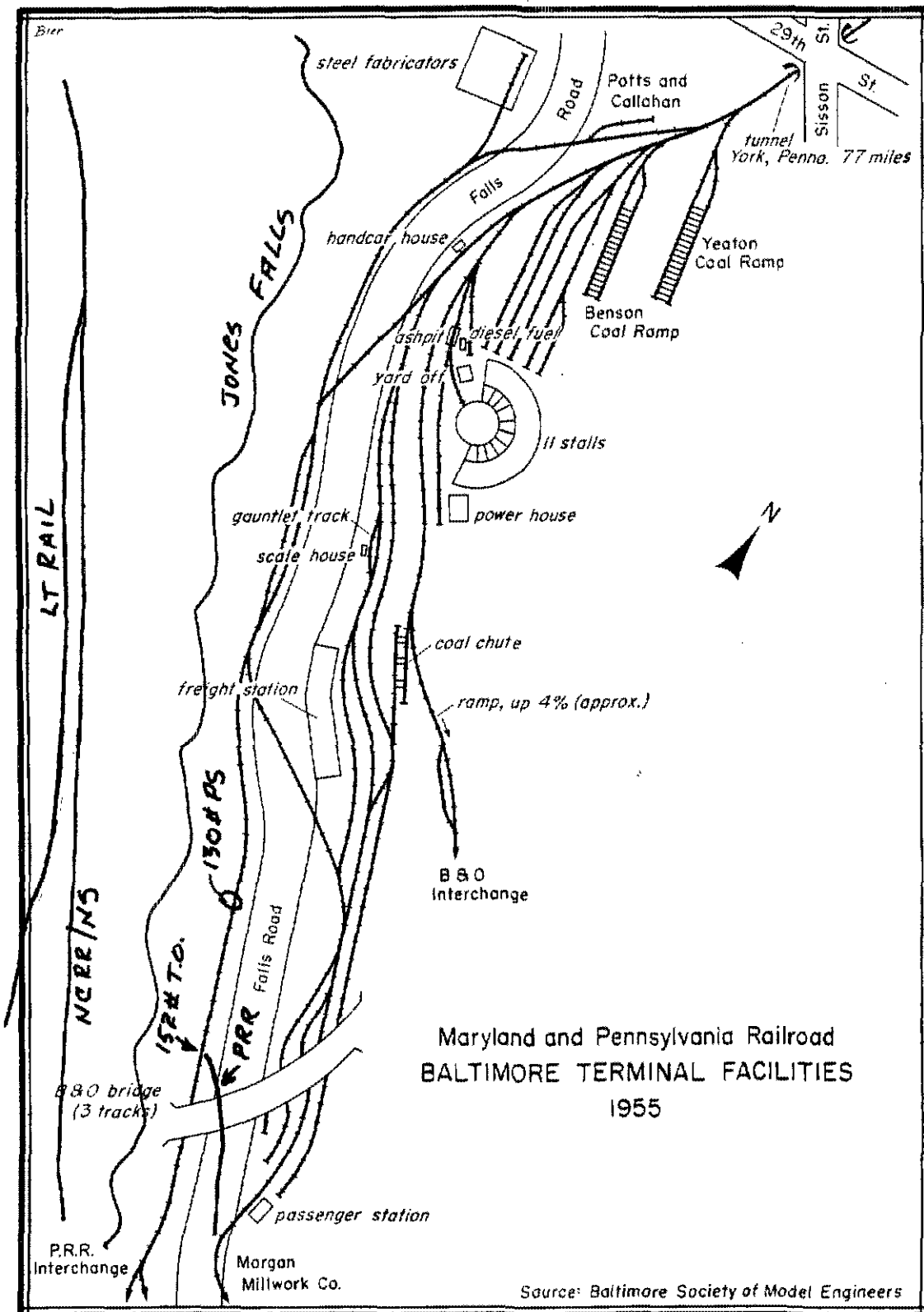




EXHIBIT  
4



Potts & Callahan

switchback starting  
to B10

Round House

NCR B10 interchange

A - ramp to  
B10  
A - NCR